

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

Case No. 09-41446

- - - - -x

In the Matter of:

AMARJIT K. SINGH,

Debtor.

- - - - -x

U.S. Bankruptcy Court

271 Cadman Plaza East

Brooklyn, New York

February 27, 2009

10:41 a.m.

B E F O R E:

HON. CARLA E. CRAIG

U.S. BANKRUPTCY JUDGE

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MOTION TO INVOKE AUTOMATIC STAY

Transcribed by: Esther Accardi

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A P P E A R A N C E S :

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BY: HONORABLE RICHARD J. MCCORD

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P R O C E E D I N G S

THE CLERK: Calling the case of Amarjit Singh, 09-

41446.

MS. JOSEPH: Good morning, Your Honor. Narissa Joseph

for Mrs. Singh.

Your Honor, this is the debtor's motion to invoke the

automatic stay after the filing of two prior cases within one

year of this filing.

Your Honor, under the rules the debtor has the burden

of rebutting the presumption of bad faith because of the two

prior filings. I met with the diet -- the debtor, I'm sorry,

Your Honor. She retained me late yesterday. She filed an

initial 13. When she filed the initial 13 her husband was --

he had a construction business and he wasn't making as much

money. They filed a Chapter 7 with the hopes of doing a loan

modification. What the (cell phone ringing) -- I apologize,

Your Honor, I think that might be me.

When they filed the Chapter 7 they obtained a

discharge and they were trying to work on the loan

modification. Their Chapter 7 attorney advised them to wait

until they received their discharge before they worked on the

loan modification. They actually ended up filing for the loan

modification on February 2nd. I think the paperwork was sent

out to the bank but nothing else was done on the loan

modification.

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1 The husband is now working as a cab driver. I went
 2 through their budget with them. Their daughter is a doctor,
 3 she's looking for a job. And they hope that with the wife's
 4 steady income, the husband's now steady income, and the
 5 daughter's income, they would be able to resume making the
 6 mortgage payments.
 7 THE COURT: Okay. My question is, is -- the 7 is
 8 still pending and Mr. McCord is the trustee, correct?
 9 MS. JOSEPH: Yes, Your Honor.
 10 THE COURT: Okay. So is this property being
 11 administered in the 7? In fact, Mr. -- we should get Mr.
 12 McCord in here so I can ask him that question. I assume that
 13 that is not the case, correct?
 14 MS. JOSEPH: No, Your Honor. The stay was lifted --
 15 THE COURT: Right.
 16 MS. JOSEPH: -- in regards to that --
 17 THE COURT: But there's a -- there's a stipulation on
 18 file here creating a carve-out but it relates to a different
 19 property.
 20 MS. JOSEPH: Yes, Your Honor, that's the property that
 21 was in Hempstead. That was a commercial property.
 22 THE COURT: And that's being sold in the 7?
 23 MS. JOSEPH: Yes, Your Honor.
 24 THE COURT: But the -- but the -- you know, if Mr.
 25 McCord can -- comes in here I would, you know, want to -- if

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1 he's able to, if he -- tell me this to just be certain that
 2 this property that the debtor wants to administer in a 13 is
 3 not already being administered in the -- in the 7.
 4 Now, let me ask you have you spoken to
 5 representatives -- any representatives of the lender?
 6 MS. JOSEPH: I spoke with Shannon from Shapiro &
 7 DiCaro, that's the -- the lender's attorney. She advised me
 8 that they had cancelled the sale because they received the
 9 bankruptcy papers, but they could not -- they didn't -- they
 10 weren't able to present a position to the Court because they
 11 did not have a chance to speak to the bank --
 12 THE COURT: All right.
 13 MS. JOSEPH: -- and figure out whether or not they're
 14 going to be retained on this matter.
 15 THE COURT: All right.
 16 (Pause)
 17 THE COURT: Okay. Sorry to bring you in on this, Mr.
 18 McCord.
 19 (Pause)
 20 MR. MCCORD: Good morning, Your Honor.
 21 THE COURT: Good morning. Thank you for stepping up
 22 here. This is a situation where this debtor who is -- is in a
 23 Chapter 7 that's pending --
 24 MR. MCCORD: Yes, Your Honor.
 25 THE COURT: -- where you're the trustee --

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1 MR. MCCORD: Yes, Your Honor.

2 THE COURT: -- has filed a 13 where she wants to cure

3 the arrears on her residence. And it does not appear to me

4 from what I can tell on the docket that you're administering

5 the house. Although, there is another asset that is being

6 administered, which is apparently a commercial property. But

7 if you can -- if you know or can tell me if this --

8 Yes, you can show him the stipulation.

9 If you -- maybe this'll jog your memory. I'm guessing

10 from the docket that you're not administering the house.

11 MR. MCCORD: Right.

12 THE COURT: But if you're not able to say then

13 that's -- you know, that also is a relevant consideration.

14 (Pause)

15 MR. MCCORD: Your Honor, I believe I

16 negotiated a carve-out with the secured creditor through

17 counsel for -- for the sale --

18 THE COURT: On the house also?

19 MR. MCCORD: It may possibly -- could I have just a

20 brief second to call him?

21 THE COURT: Yeah, sure. But, you know, as I'm

22 thinking about this now I'm realizing the property -- the sale

23 has been cancelled.

24 MS. JOSEPH: Yes, Your Honor.

25 THE COURT: That's in -- this is what chambers was

1 told as well. So I think that since we're not looking at an
 2 imminent foreclosure sale what I would do is set this down for
 3 hearing on what would be your Chapter 13 confirmation date,
 4 which is the 24th. Right.
 5 MR. MCCORD: March, Your Honor?
 6 THE COURT: Right, the 24th of March. I can't imagine
 7 they'd be able to re-notice a foreclosure sale before then.
 8 But in any event, I would issue an order directing the lender
 9 to refrain from pursuing a foreclosure sale prior to March
 10 24th. And then -- so we'll set it down for 1 -- 1 o'clock on
 11 the 24th?
 12 (Pause)
 13 THE COURT: Make it 12 so they don't have to -- so Mr.
 14 McCord doesn't have to wait around, you know. I mean -- and
 15 if -- Mr. McCord, if it turns out that you, you know -- if it
 16 turns out this is a property you're administering in your 7 --
 17 MR. MCCORD: It is not.
 18 THE COURT: If it turns out that it is --
 19 MR. MCCORD: Oh.
 20 THE COURT: -- then it would be a problem, I should
 21 think, for them to continue with their 13.
 22 MR. MCCORD: Correct.
 23 THE COURT: This is the -- but if it's not something
 24 you're administering then that's a different story.
 25 MR. MCCORD: I will look into it. And if it's not

1 I'll report back to the Court prior to that date in writing,
2 maybe I'll send -- with your permission, I'll send you a
3 letter.

4 THE COURT: I appreciate that.

5 MR. MCCORD: If it is, I'll send you a letter also but
6 I'll plan on appearing then.

7 THE COURT: So, Ms. Joseph, what we'll do, given --

8 given the fact that the sale's been cancelled anyway, so I'll
9 set this motion down for a hearing on the 24th. We'll issue
10 an order. You need to make sure that you serve the lender

11 appropriately.

12 MS. JOSEPH: Okay.

13 THE COURT: And you have to -- that way we'll be able
14 to hear any opposition.

15 MS. JOSEPH: Okay.

16 THE COURT: I'll want you to serve Mr. McCord and the
17 Chapter 13 trustee as well -- as well as the lender.

18 MS. JOSEPH: All right.

19 THE COURT: So -- so I think that takes care of this.

20 MS. JOSEPH: Okay.

21 THE COURT: All right.

22 MS. JOSEPH: Thank you.

23 THE COURT: Oh, we're setting this down for 12

24 o'clock -- 12 o'clock on the 24th.

25 (Proceedings concluded at 10:48 a.m.)

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Ordered That Lender is to Refrain
From Pursuing a Foreclosure Sale Prior
To March 24th Hearing

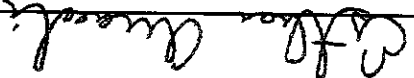
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R U L I N G

I N D E X

C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a true and accurate record of the proceedings.



ESTHER ACCARDI (CET*D-485)

MAERT Certified Electronic Transcriber

Veritext LLC

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Date: September 24, 2009

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